molten metal and the dust from the product were necessarily inhaled during the course of his work. He was ignorant of the danger of this act and as a result of his inhalation he became stricken with lead poisoning and paralyzed. *Held,* that a servant assumes only those risks of which he thoroughly comprehends the danger. *Pigeon* v. *W. P. Fuller & Co.* (1909), — Cal. —, 105 Pac. 976.

Though a servant does assume the ordinary and usual risks incident to an employment, (*Hennesy* v. *Bingham,* 125 Cal. 627, 58 Pac. 200; *Illinois Terminal Co.* v. *Thompson,* 210 Ill. 226, 71 N. E. 328), he does not assume the extraordinary and unusual risks. *Malcott* v. *Hood,* 201 Ill. 202, 66 N. E. 247; *Dohn* v. *Dawson,* 157 N. Y. 686, 51 N. E. 1090. An employee does not assume the risk incident to a dangerous employment unless the danger is obvious or is known to him. *Osborne* v. *Alabama Steel & Wire Co.,* 135 Ala. 571, 33 South 687; *Pittsburgh Bridge Co.* v. *Walker,* 170 Ill. 550, 48 N. E. 915; THOMPSON, NEG. § 4641. In order to put upon the servant the assumption of risk of a danger, he must not only know of the defect, but he must appreciate the danger arising therefrom. *Nofsinger* v. *Goldman,* 122 Cal. 609, 55 Pac. 425; *Anderburg* v. *Chi. & N. W. R. Co.,* 98 Ill. App. 207. If the servant has the opportunity of observing the precautions taken by other employees to avoid the effect of noxious gases, then he assumes the risk of injury from such, (THOMPSON NEG. § 4701; *Berry* v. *Atlantic White Lead Co.,* 30 App. Div. 205, 51 N. Y. Supp. 602), but the risk of injuries from these agencies is not assumed by a common laborer who is employed in the mere drudgery of the work, especially if he has not been warned of the danger. THOMPSON NEG. § 4701; *Wagner* v. *Jayne Chem. Co.,* 147 Pa. St. 475, 23 Atl. 772. It is the duty of the master to warn his servants as to the dangers of which he knows or ought to know and of which the servant has no knowledge, actual or constructive, (*Illinois Steel Co.* v. *Ryska,* 200 Ill. 280, 65 N. E. 734; *Geller* v. *Briscoe Mfg. Co.,* 136 Mich. 330, 99 N. W. 281), and if he has knowledge that the particular employment is, from extraneous causes, hazardous to a degree beyond what it fairly imports or is understood by the servant, he is liable for a failure to inform the servant of that fact. *Baxter* v. *Roberts,* 44 Cal. 187, 13 Am. Rep. 160; *The Pioneer,* 78 Fed. 600. This duty is the primary duty of the master and delegation of it cannot relieve him of liability. *Grimaldi* v. *Lane,* 177 Mass. 565, 59 N. E. 451; *The Pioneer,* supra.

MASTER AND SERVANT—CONTRIBUTORY NEGLIGENCE—ASSUMPTION OF RISK-ASSAULT.—Plaintiff and her husband were engaged by defendant company to present their imitation of a hen and rooster at defendant's theater. The actors and stage hands agreed among themselves that at the last performance of the engagement they would engage in a charivari. Plaintiff previous to the time of receiving the injuries, had participated in this charivari. While plaintiff and her husband were giving their performance the other actors were hurling oyster cans, old shoes and other articles at them. During the performance plaintiff mounted a chair, which was not necessary and which was not her custom, and upon stepping to the floor her ankle was

struck by a can. She now brings action against the theater company seeking to recover damages for the injuries suffered. *Held,* that there could be no recovery. *Novelty Theater Company* v. *Whitcomb* (1909), — Colo. —, 106 Pac. 1012.

In denying the right to recover the court based its decision on the grounds of contributory negligence, assumption of risk, and willful assault. It was held that mounting the chair was wholly voluntary and without the scope of the employment, and beyond the purview of plaintiff's part as theretofore rendered. Such conduct added to the vigor in which the charivari was being carried on. This action as a matter of law made plaintiff guilty of contributory negligence. In this holding the case is supported by *Wilson* v. *Louisville & N. R. Co.,* 85 Ala. 269; *The John B. Lyon* (D. C.), 33 Fed 184; *East St. Louis P. & P. Co.* v. *McElroy,* 29 Ill. App. 504. A contrary view is announced in *Dodge* v. *Manufacturer's Coal & Coke Co.,* 115 Mo. App. 501; *Gamble* v. *Akron, B. & C. R. Co.,* 63 Ohio St. 352. In remaining on the stage continuing her performance for a considerable period after the actors had commenced hurling the missives on the stage, with full knowledge of the danger incident to the situation, plaintiff assumed the risk. In accord with this view are: *Gillette* v. *General Electric Co.,* 187 Mass. 1; *Green* v. *Brainerd & N. M. Ry. Co.,* 85 Minn. 318; *Lynch* v. *City of North Yakima,* 37 Wash. 657. In holding that the employer is not liable for an assault committed by a fellow servant, the court has followed the general rule. It would seem that even in case the stage manager be considered a vice principal, his employer would not be liable for an assault that he may have caused to be made. A servant's authority to commit a battery on another cannot be inferred. However, a contrary view was announced in the recent case of *Medlin Milling Co.* v. *Boutnell,* — Tex. Civ. App. —, 122 S. W. 442.

MUNICIPAL CORPORATIONS—BILLBOARDS—REGULATION—DISTANCE FROM THE STREET.—The plaintiff, a city without express power from the legislature to regulate billboards, but with incidental authority by virtue of its police power, passed an ordinance prohibiting the erection of any billboard within ten feet of the street line. In a prosecution of the defendant for violating this ordinance the court *held* that the ordinance "has no real or substantial relation to the protection of the public health, the public morals, or the public safety, and imposes an unnecessary and unreasonable restriction upon the use of private property." *Curran Bill Posting and Distributing Co.* v. *City of Denver* (1910), — Colo. —, 107 Pac. 261.

By virtue of its police power a city may place reasonable and necessary restrictions upon the right of the land owner to build upon his land. But such restrictions are confined to considerations which have for their object the safety and welfare of the community and do not include aesthetic considerations which are regarded as "a matter of luxury and indulgence rather than necessity." *Passaic* v. *Paterson Bill Posting Co.* (1905), 72 N. J. L. 285, 62 Atl. 267, 111 Am. St. Rep. 676; *Varney* v. *Williams* (1909), 155 Cal. 318, 100 Pac. 867, 21 L. R. A. (N. S.) 741; *State* v. *Whitlock* (1908), 149 N. C. 542, 63 S. E. 123, 128 Am. St. Rep. 670. If the legislature has expressly